

# SITE CLOSURE AND LAND TRANSFER: CASE STUDIES

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## Introduction

One of the biggest challenges facing Federal facilities today is accomplishing cost-effective and timely site closure. Site closure takes on a whole new element of complexity when ownership of the site is transferred. There are many variables that affect site closure and property transfer projects including regulations, technology, commerce, and politics. This paper describes the strategies employed in closing a site and transferring property. A checklist of activities that can be used as a guide to successful site closure and property transfer is included.

## Methods

Two principal subjects are addressed in this paper: site closure and property transfer. The following paragraphs highlight important factors in achieving site closure and property transfer for Federal facilities. Table 1, in the attachment, is a checklist of key factors and considerations that should be addressed in any site closure or property transfer project. This list is the result of “lessons-learned” on site closure projects and property transfer projects. It should not be considered an absolute complete list of all activities required to close or transfer property. A complete list of requirements for site closure and property transfer will be project-specific and should be formulated by the project stake-holders.

## Discussion

It is never too early to consider site closure strategies. However, the bulk of this strategy development will come after the site characterization is complete and while the remedial options are being evaluated. A key component to any remedial alternative evaluation will be the development of an exit strategy.

An exit strategy is defined as a process that will be used to demonstrate that the desired performance has been achieved, and the response objective has been met. There are four essential components of an exit strategy:

- A description of the objective activity (i.e., the response action objective);
- A performance “model” that describes the expected course of the remediation process;
- A listing of the performance metrics, decision criteria, and endpoints that will be used to assess how the response is progressing and demonstrate when the objective has been reached; and
- A contingency plan that will be implemented if data indicate that objectives will not be met.

There is no available definition that is widely accepted for the term “complete.” However, restoration of a site can be considered complete if it is deemed acceptable for unrestricted land use. Another term, “complete with controls, ” is a phrase that can be applied to risk-based processes and that indicates active remediation is complete and there are ongoing institutional and/or engineering controls. A site that is “complete with controls” requires a regulatory enforcement mechanism.

Regulatory endpoints will vary based on regulatory authority, and site-specific criteria incorporated in permits, consent decrees, or other relevant agreements.

Table 1, in the attachment, identifies key criteria to be considered for site closure.

Federal facility property transfer can follow two general paths, “Normal Transfer” and “Early Transfer.” Both activities can be accomplished prior to site closure. In the case of Normal Transfer, a site can be transferred when:

- All remedial activities are complete and no further action is required;
- All remedial actions suitable for the intended land use are complete and only land use controls are required; and
- Remedial activities are ongoing, a remedy is in place, and EPA has determined that the remedy is operating properly and successfully.

In addition, authority is now available for the Department of Defense (DoD) to transfer base realignment and closure (BRAC) properties before a remedy is in place as long as a deferral of requirements under CERCLA Section 120(h) is obtained (separate DoD guidance specifically addresses early transfers). In this case, one of seven environmental condition of property descriptions has to be defined for each unit transferred. Additionally, depending on the environmental condition of the property, specific notification requirements and covenants, as well as access requirements, apply. The transferring entity must also demonstrate that it has the technical and financial capacity to implement the cleanup work once the property is transferred.

Under both transfer scenarios, the following documents are required:

- Environmental Baseline Survey for Transfer (EBST)
- Finding of Suitability for Early Transfer (FOSET) or Finding of Suitability for Transfer (FOST) – EPA typically refers to the FOSET as a Covenant Deferral Request (CDR).

The above will convey the technical and legal information required for stakeholders to evaluate if normal or early transfer is feasible.

Under any transfer scenario, it is important that the stakeholders identify the critical path tasks that will drive the property transfer schedule. For example, under a Normal Transfer scenario, adequate time must be incorporated into the project schedule to demonstrate that a remedial system is operating properly and successfully. For sites where remedial action of groundwater is occurring, this could take up to, and possibly longer than, one year.

The transfer of environmentally regulated property is far from common. For this reason, one challenge facing the entity that wants to initiate property transfer is educating the stakeholders on the issues and nuances of property transfer. It is imperative that proper decision-makers are involved in all aspects of property transfer. Those individuals involved in typical environmental work must recognize their relative strengths and weaknesses and access their respective organizations for proper support. Table 1 identifies the criteria to be considered when transferring federal property.

## References

U.S. Department of Energy. Developing Exit Strategies for Environmental Restoration Projects. March 2000. DOE-EH413-0013. <http://tis.eh.doe.gov/oepa/guidance/cercla/exitstrategies.pdf>.

The Environmental Site Close-out Web site ([Online:] <http://www.afbca.hq.af.mil/closeout>) contains a full document library of all environmental site closeout guidance and related documents that were used in the development of this guide.

The Environmental Site Close-out Process Guide, developed by a working group with representation from the Office of the Secretary of Defense, the DOD Components, the Environmental Protection Agency (EPA), state officials, and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) Federal Facilities Base Closure Working Group ([Online:] <http://www.dtic.mil/envirodod/Policies/Cleanup/expandCU.htm>). Section 9 of this document contains a thorough list of DOD and EPA references related to site close-out.

**Table 1. Checklist for Site Closure and Property Transfer**

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**Site Closure:**

- Develop understanding of contaminants and relative extent, in all media impacted.
- Develop understanding of migration pathways, potential receptors, and potential risks to human health and the environment.
- Develop exit strategy. Ensure that this is a living concept that is modified and evaluated throughout the course of site activities.
- Identify all activities and criteria required for closure, with project stake-holders
- Develop understanding of likely future land use.
- Develop remedial action objectives and associated cleanup levels, with clear connection to exit strategy.
- Develop remedial action plan that will meet objectives and cleanup levels appropriate for intended land use, with clear connection to exit strategy. This would be an appropriate time to introduce your exit strategy to key stakeholders.
- Implement plan. Monitor conformance with exit strategy – specifically performance metrics, decision criteria, and endpoints so the constant focus is on completion. Adapt as appropriate to accelerate work toward closure.
- Once metrics for closure have been achieved, request regulatory concurrence of closure.
- When institutional controls are required, file deed or implement other mechanism to document deed restrictions and land-use controls.
- Make sure all key decision makers are involved at appropriate time.
- With appropriate stakeholders, discuss “institutional accountability” components that can be implemented when key people leave the project. This ensures that the agreed upon plan is executed as agreed by the key stakeholders.
- Identify potential “sticking points” with stakeholders as early as possible, so they can be worked out as the process progresses.
- Keep all stakeholders involved (regulatory, neighbors, public, media as appropriate).

**Federal Land Transfer:**

- Define the mechanism by which the property will be transferred (i.e., Normal Transfer or Early Transfer).
  - Identify all activities and criteria required for closure, with project stake-holders
  - Ensure that the proper decision-makers for stakeholder organizations are involved as early as possible.
  - Identify how political or commerce considerations could help accelerate the process (e.g., transfer of a closed DoD facility could accelerate economic activity in the area).
  - If land use controls are required, coordinate closely with regulatory entities on how they will be implemented and enforced.
  - Understand all relevant schedule impacts (e.g., gaining OPS status from EPA, approval from local, legislative, or executive branches of government).
  - Facility redevelopment is in place and proposed land use coincides with existing site contamination (e.g., balance land use with cleanup costs).
  - Collect data for, and complete the Environmental Baseline Survey for Transfer (EBST).
  - Complete Finding of Suitability for Transfer (FOST) or Finding of Suitability for Early Transfer (FOSET).
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